

**Testimony of Eleni P. Christidis
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**Before the Committee of the Whole
Council of the District of Columbia**

**Performance Oversight Hearing Regarding
the Department of Consumer & Regulatory Affairs**

February 24, 2022

The Legal Aid Society of the District of Columbia¹ appreciates this opportunity to comment on the performance of the Department of Consumer & Regulatory Affairs (“DCRA”) and urge the Council to enact legislation to ensure that protecting the health and safety of District residents in rental housing becomes a core strategic goal of the new Department of Buildings (DOB).

For years, DCRA has abdicated its charge to effectively enforce the housing code on behalf of District renters. Instead, the burden of holding landlords to their legal duty to provide healthy, safe, and habitable housing has fallen on tenants, community organizers, the courts, and other District agencies who prioritize health and safety but lack direct enforcement authority.

While these stakeholders all have a role to play in advancing the shared goal of improved public health and safety, DCRA is supposed to lead that effort in the realm of rental housing. Sadly, year after year, DCRA has shown an inability or unwillingness to adopt practices to effectively enforce the housing code or measurably protect the health and safety of residents. Nor has DCRA articulated a clear vision or strategy to align the organizational structure of the new Department of Buildings (“DOB”) with that basic goal.² In the absence of a clear strategy from

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² The communications and strategic human capital plan released this month focuses on DOB’s role in regulating construction activity and issuing permits, with housing code compliance and enforcement barely mentioned as part of the agency’s mission. *See* Dep’t of Consumer &

DCRA to achieve any measurable outcome of improved housing conditions, the Council must act now by passing legislation to give DOB the adequate staffing and enforcement tools it will need to effectively carry out its duties.

The Current Landscape of Landlord-Tenant Law More Often Incentivizes than Deters Unsafe Housing Conditions—Even When DCRA is Involved

The lack of strategic enforcement of the housing code creates perverse incentives for landlords to allow housing code violations to persist unabated. We know from talking to tenants that both small and large landlords use poor housing conditions as a tactic to constructively evict tenants or grind them down until they feel they have no choice but to move.

Ms. D, a single mother, described living for three months with a hole in her ceiling, a rodent infestation, and power outlets and a dishwasher that did not work from the time she moved in. Ms. D requested an inspection from DCRA, but no one ever came to her unit to perform the inspection. She was given other resources to call, but no matter where she called, no one was able to help her. Mentally and physically exhausted by the stress of the situation, she gave up and moved. Ms. D should never have had to move out of her affordable two-bedroom unit over issues that could have been fixed in a day or less. But, having gotten nowhere from calling DCRA, she genuinely felt she had no other option.

Legal Aid has heard other concerning stories from tenants whose homes were placarded as uninhabitable but where DCRA did not subsequently use the full extent of its enforcement power to ensure that dangerous structural conditions were corrected. In one instance, a tenant recalled being told by a DCRA inspector, “We can only fine [the landlord]; we can’t make her fix anything.” Other tenants were told by DCRA that rooms that they rented were not fit for human habitation and that they could no longer sleep in them, without any further recourse for the tenants or meaningful consequences for the landlords who had rented those illegal rooms out in the first place.

At other properties, landlords profit by chronically ignoring tenants’ repair requests. In rent-controlled properties with widespread problems, there is little incentive to improve conditions. Landlords allow conditions like mold, inadequate heating and ventilation, rodent and cockroach infestations, and antiquated plumbing and electricity systems to go unaddressed, routinely

Regulatory Affairs, *Department of Consumer & Regulatory Affairs Transition Plan – Version 2.0* (Feb. 2022). The list of target audiences and stakeholders for the DOB rollout focuses on businesses and trade groups, failing to mention tenants, tenant organizers, or other community-based organizations serving tenants. *See id.* at 7-8. Further, DCRA appears to be setting the bar low for DOB’s initial effectiveness, as evidenced by the communication plan for DOB, which has a primary goal of managing the public’s expectations for a “multi-year [rollout] effort.” *Id.* at 6.

ignoring tenants' complaints.³ These conditions are particularly insidious because they can be time- and resource-intensive to properly remediate but easy and cheap to conceal (e.g., by painting over mold), all while having a profoundly negative impact on tenant health. After months and years of living with these conditions and seeing no improvement, many tenants simply give up and move out. For certain landlords, this outcome is optimal, since each time a tenant vacates a rent-controlled unit, the landlord can increase the rent for that unit by 10% or 20%.⁴ Where there is no meaningful financial incentive to improve conditions, deliberate neglect and tenant churn becomes the economic model for many rent-controlled properties in the District.

Even where DCRA has taken enforcement action, backwards incentive structures and non-existent follow-up virtually ensure that unsafe conditions will persist while landlords are nevertheless permitted to increase rents by double-digit figures. Legal Aid is currently working with two groups of tenants at rent-controlled properties in Columbia Heights whose owner filed hardship petitions seeking 34% and 64% rent increases. Such dramatic rent increases, if implemented, would displace these predominantly working-class, immigrant communities and eliminate two sources of affordable housing in this neighborhood.

The tenants at both properties have documented widespread mold growth in their units (among many other housing code violations) that persists to this day. Notably, DCRA inspected both properties and issued fines to the landlord, but even after those fines were paid, DCRA's enforcement did not result in either property being flagged for subsequent re-inspection or in actual remediation of the persistent mold and other problematic conditions at the properties. Neither property has received a proactive inspection in a decade, according to public records. To add insult to injury, the landlord included the fines and legal costs of the DCRA enforcement action among its expenses justifying its claim of financial hardship and need to increase the rent by 34% and 64%. After years of neglect, this landlord stands to reap financial gains while tenants continue to live in conditions that are harmful to their health. *These tenants would like to invite members of this Committee to meet them at these properties, hear their stories, and see the conditions in which they live with your own eyes.*

DCRA Has All But Said It Intends to Do Nothing to Change the Status Quo

As Legal Aid and other public witnesses testified at the February 16, 2022 Roundtable regarding the establishment of the Department of Buildings, the Council must act now to ensure that the failures of DCRA are not simply replicated in the new DOB.⁵

³ See Amanda Michelle Gomez, "Landlords Receive Federal Funds for Rental Assistance, Even When Tenants Live in Poor Conditions," Washington City Paper, (July 15, 2021), *available at* <https://washingtoncitypaper.com/article/523476/landlords-receive-federal-funds-for-rental-assistance-even-when-tenants-live-in-poor-conditions/>.

⁴ See D.C. Code § 42–3502.13.

⁵ See D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen, "Performance Oversight Roundtable Regarding 'Implementation of Law 23-269, the Department of Buildings Establishment Act of 2020'" (Feb. 16, 2022).

Director Chrappah’s answers to this Committee’s questions at last week’s Roundtable should be setting off alarm bells about the direction in which DOB is presently headed. When asked point-blank about increasing the number of housing inspectors, Director Chrappah was equivocal and non-committal. When asked about strategic collaboration and data-sharing with other agencies, Director Chrappah’s response was that “everyone in [DCRA] and the public has access to the same data” on whether a violation exists at a given property, with no acknowledgment of the potential usefulness of non-public data on asthma rates or lead paint or mold as relevant to a proactive inspections strategy.

DCRA’s publicly available information is not only difficult to parse, but what limited conclusions can be gleaned from it are an indictment of DCRA’s current ineffectiveness. At the Roundtable, Director Chrappah touted the increasing number of inspections being conducted each year, a dubious indicator of success. Based on DCRA’s own dashboard, the number of inspections conducted where violations were found has increased year after year since FY2019, but DCRA’s apparent indicator of success, “Total repairs confirmed,” has *decreased* each year as a percentage of inspections where violations were found.⁶ Moreover, DCRA’s other principal metric, “Repairs confirmed tied to violations issued the same [Fiscal Year],” is consistently lower each year than the “Total repairs confirmed” metric, suggesting that the actual “confirmed” abatement rate is *less* than the 34-53% figures DCRA recorded since FY2019.⁷

This supposedly useful data gives the public no meaningful insight into DCRA’s enforcement strategy, other than the alarming suggestion that DCRA has become increasingly less effective over time. Nor did Director Chrappah’s responses suggest any plan or desire on the part of the Administration to use other agencies’ data to drive DOB’s enforcement priorities, in response to questions posed at the Roundtable.

As the testimony of Gregory Miao of ChangeLab Solutions underscored, a data-informed approach to housing code enforcement involves focusing inspection efforts using metrics that reflect community priorities.⁸ Collecting data for data’s sake is not a data-driven enforcement strategy. What metrics does the District of Columbia prioritize? Is it the number of children with asthma on any given block? Is it the number of past code violations found in a twelve-month period? If DCRA cannot or will not answer these basic questions, if it cannot or will not identify public health priorities and aligned metrics, the Council must do that for DOB.

⁶ See DCRA Agency Dashboard, *Inspections*, available at <https://eservices.dcradepartment.com/DCRAAgencyDashboard/index>.

⁷ *Id.* Nor does DCRA currently include the number of abated housing code violations or time to abatement as key performance indicators.

⁸ See Written Testimony of Gregory Miao, ChangeLab Solutions, “Testimony Before the District of Columbia Council Committee of the Whole” (Feb. 16, 2022).

The Council Must Seize this Moment to Shape DOB Through Legislation

In addition to making sure that DOB starts off with the right mission and priorities, there are several concrete steps that the Council can take to ensure that the transition from DCRA to DOB advances the goal of safe and healthy housing. These have been outlined in Legal Aid’s past testimony⁹ and in previously introduced legislation. They include:

- employing enough in-house inspectors to achieve at least a ratio of one inspector for every 2,000 residential housing units, a ratio more in line with other jurisdictions;¹⁰
- codifying inspection and enforcement steps, timeliness, and consequences for noncompliant landlords, including automatically referring repeat housing code violators to the Office of the Attorney General, and requiring internal reviews of enforcement data by DOB which must also be reported to the Council;¹¹

⁹ See, e.g., D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen, “Performance Oversight Roundtable Regarding ‘Implementation of Law 23-269, the Department of Buildings Establishment Act of 2020’” (Feb. 16, 2022); D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen, “Performance Oversight Hearing Regarding the Department of Consumer & Regulatory Affairs” (Mar. 18, 2021); D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen Harrison, “Performance Oversight Hearing Regarding the Department of Consumer & Regulatory Affairs,” (Mar. 3, 2020); D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen Harrison, Public Hearing on “Bill 23-91, Department of Buildings Establishment Act of 2019 Office of Inspector General Prospective Evaluation of Bill 23-91 and Evaluation of DCRA Business Processes” (Dec. 10, 2019).

¹⁰ The Tenant and Homeowner Accountability and Protection Amendment Act of 2019, Bill 23-0394 (mandating that DCRA employ one residential housing inspector for every 2,000 residential housing units). The District currently has approximately 166,019 renter-occupied housing units. U.S. Census Bureau, “American Community Survey Data Profiles – District of Columbia, Housing Characteristics,” available at <https://data.census.gov/cedsci/> (last visited Feb. 23, 2022).

¹¹ See, e.g., the Department of Consumer & Regulatory Affairs Omnibus Amendment Act of 2018 (Act 22-0317) (creating a mandatory 30-day abatement period, limiting extensions granted to landlords, and requiring DCRA to issue a notice of violation or infraction for certain types of serious violations). Legal Aid and the Children’s Law Center can provide the Committee with updated figures on other jurisdictions at the upcoming budget hearing for the Department of Buildings.

- earmarking fines collected from housing code violations to go to the Nuisance Abatement Fund, and requiring that funds be used to repair emergency conditions when a unit is deemed uninhabitable;¹²
- codifying a proactive inspections program into law that mandates inspections every 4 years, while prioritizing properties with known risk factors for more frequent inspection;¹³
- mandating the presence of inspectors in court and administrative proceedings (including in the Landlord and Tenant Branch of the D.C. Superior Court and Office of Administrative Hearings mediations and hearings);¹⁴
- mandating ward- and neighborhood-specific enforcement teams and liaisons (including incentivizing the hiring of bilingual staff and requiring training in cross-cultural competency);¹⁵ and
- suspending, revoking, and not renewing business licenses for landlords who are repeatedly cited for code violations.¹⁶

Legal Aid is eager to continue to work with members of this Committee in crafting legislation grounded in the experiences of tenants and in expert recommendations and documented best practices from other jurisdictions.

Conclusion

DCRA’s inability and unwillingness to enforce the housing code in the District for years has generated a fundamental misalignment of financial incentives that continues to perpetuate the problem of unhealthy and dangerous housing, especially for people living on the margins. Poor tenants, elderly tenants, immigrant tenants, and tenants from other marginalized groups face greater obstacles to securing affordable housing and are most at risk of being steered into properties with worse housing conditions.

¹² *See id.*

¹³ *See* D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen Harrison, Performance Oversight Hearing Regarding the Department of Consumer & Regulatory Affairs,” (Mar. 3, 2020).

¹⁴ *See* Bill 23-0394, *supra* note 11 (requiring DCRA to attach inspectors to both the Housing Conditions Calendar and the Landlord and Tenant Branch of the D.C. Superior Court).

¹⁵ *See* D.C. Council, Committee of the Whole, Written Testimony of Beth Mellen, “Performance Oversight Roundtable Regarding ‘Implementation of Law 23-269, the Department of Buildings Establishment Act of 2020’” (Feb. 16, 2022).

¹⁶ *See id.*

The law, on paper, does not discriminate. It promises the same guarantee of safe, habitable living conditions for every lease entered into in the District. If the Council fails to correct the course that DCRA has charted, however, then we will continue to live in an ineffectual and discriminatory regime that forces tenants to bear the brunt of a landlord's malfeasance, with no promise of relief and no guarantee of justice.